

§ 1.933 Public notices.

(a) *Generally.* Periodically, the Commission issues Public Notices in the Wireless Radio Services listing information of public significance. Categories of Public Notice listings are as follows:

(1) *Accepted for filing.* Acceptance for filing of applications and major amendments thereto.

(2) *Actions.* Commission actions on pending applications previously listed as accepted for filing.

(3) *Environmental considerations.* Special environmental considerations as required by Part 1 of this chapter.

(4) *Informative listings.* Information that the Commission, in its discretion, believes to be of public significance. Such listings do not create any rights to file petitions to deny or other pleadings.

(b) *Accepted for filing public notices.* The Commission will issue at regular intervals public notices listing applications that have been received by the Commission in a condition acceptable for filing, or which have been returned to an applicant for correction. Any application that has been listed in a public notice as acceptable for filing and is (1) subject to a major amendment, or (2) has been returned as defective or incomplete and resubmitted to the Commission, shall be listed in a subsequent public notice. Acceptance for filing shall not preclude the subsequent dismissal of an application as defective.

(c) *Public notice prior to grant.* Applications for authorizations, major modifications, major amendments to applications, and substantial assignment or transfer applications for the following categories of stations and services shall be placed on Public Notice as accepted for filing prior to grant:

(1) Wireless Telecommunications Services.

(2) Industrial radiopositioning stations for which frequencies are assigned on an exclusive basis.

(3) Aeronautical enroute stations.

(4) Aeronautical advisory stations.

(5) Airport control tower stations.

(6) Aeronautical fixed stations.

(7) Alaska public fixed stations.

(d) *No public notice prior to grant.* The following types of applications, notices, and other filings need not be

placed on Public Notice as accepted for filing prior to grant:

(1) Applications or notifications concerning minor modifications to authorizations or minor amendments to applications.

(2) Applications or notifications concerning non-substantial (*pro forma*) assignments and transfers.

(3) Consent to an involuntary assignment or transfer under section 310(b) of the Communications Act.

(4) Applications for licenses under section 319(c) of the Communications Act.

(5) Requests for extensions of time to complete construction of authorized facilities.

(6) Requests for special temporary authorization not to exceed 30 days where the applicant does not contemplate the filing of an application for regular operation, or not to exceed 60 days pending or after the filing of an application for regular operation.

(7) Requests for emergency authorizations under section 308(a) of the Communications Act.

(8) Any application for temporary authorization under section 101.31(a) of this chapter.

(9) Any application for authorization in the Private Wireless Services.

[63 FR 68929, Dec. 14, 1998]

§ 1.934 Defective applications and dismissal.

(a) *Dismissal of applications.* The Commission may dismiss any application in the Wireless Radio Services at the request of the applicant; if the application is mutually exclusive with another application that is selected or granted in accordance with the rules in this part; for failure to prosecute or if the application is found to be defective; if the requested spectrum is not available; or if the application is untimely filed. Such dismissal may be "without prejudice," meaning that the Commission may accept from the applicant another application for the same purpose at a later time, provided that the application is otherwise timely. Dismissal "with prejudice" means that the Commission will not accept another application from the applicant for the same purpose for a period of one year. Unless

otherwise provided in this part, a dismissed application will not be returned to the applicant.

(1) *Dismissal at request of applicant.* Any applicant may request that its application be withdrawn or dismissed. A request for the withdrawal of an application after it has been listed on Public Notice as tentatively accepted for filing is considered to be a request for dismissal of that application without prejudice.

(i) If the applicant requests dismissal of its application with prejudice, the Commission will dismiss that application with prejudice.

(ii) If the applicant requests dismissal of its application without prejudice, the Commission will dismiss that application without prejudice, unless:

(A) It has been designated for comparative hearing; or

(B) It is an application for which the applicant submitted the winning bid in a competitive bidding process.

(2) If an applicant who is a winning bidder for a license in a competitive bidding process requests dismissal of its short-form or long-form application, the Commission will dismiss that application with prejudice. The applicant will also be subject to default payments under Subpart Q of this part.

(3) An applicant who requests dismissal of its application after that application has been designated for comparative hearing may submit a written petition requesting that the dismissal be without prejudice. Such petition must demonstrate good cause and be served upon all parties of record. The Commission may grant such petition and dismiss the application without prejudice or deny the petition and dismiss the application with prejudice.

(b) *Dismissal of mutually exclusive applications not granted.* The Commission may dismiss mutually exclusive applications:

(1) For which the applicant did not submit the winning bid in a competitive bidding process; or

(2) That receive comparative consideration in a hearing but are not granted by order of the presiding officer.

(c) *Dismissal for failure to prosecute.* The Commission may dismiss applications for failure of the applicant to prosecute or for failure of the applicant

to respond substantially within a specified time period to official correspondence or requests for additional information. Such dismissal will generally be without prejudice if the failure to prosecute or respond occurred prior to designation of the application for comparative hearing, but may be with prejudice in cases of non-compliance with § 1.945 of this part. Dismissal will generally be with prejudice if the failure to prosecute or respond occurred after designation of the application for comparative hearing. The Commission may dismiss applications with prejudice for failure of the applicant to comply with requirements related to a competitive bidding process.

(d) *Dismissal as defective.* The Commission may dismiss without prejudice an application that it finds to be defective. An application is defective if:

(1) It is unsigned or incomplete with respect to required answers to questions, informational showings, or other matters of a formal character;

(2) It requests an authorization that would not comply with one or more of the Commission's rules and does not contain a request for waiver of these rule(s), or in the event the Commission denies such a waiver request, does not contain an alternative proposal that fully complies with the rules;

(3) The appropriate filing fee has not been paid; or

(4) The FCC Registration Number (FRN) has not been provided.

(e) *Dismissal because spectrum not available.* The Commission may dismiss applications that request spectrum which is unavailable because:

(1) It is not allocated for assignment in the specific service requested;

(2) It was previously assigned to another licensee on an exclusive basis or cannot be assigned to the applicant without causing harmful interference; or

(3) Reasonable efforts have been made to coordinate the proposed facility with foreign administrations under applicable international agreements, and an unfavorable response (harmful interference anticipated) has been received.

(f) *Dismissal as untimely.* The Commission may dismiss without prejudice applications that are premature or late

Federal Communications Commission

§ 1.935

filed, including applications filed prior to the opening date or after the closing date of a filing window, or after the cut-off date for a mutually exclusive application filing group.

[63 FR 68930, Dec. 14, 1998, as amended at 66 FR 47895, Sept. 14, 2001]

§ 1.935 Agreements to dismiss applications, amendments or pleadings.

Parties that have filed applications that are mutually exclusive with one or more other applications, and then enter into an agreement to resolve the mutual exclusivity by withdrawing or requesting dismissal of the application(s), specific frequencies on the application or an amendment thereto, must obtain the approval of the Commission. Parties that have filed or threatened to file a petition to deny, informal objection or other pleading against an application and then seek to withdraw or request dismissal of, or refrain from filing, the petition, either unilaterally or in exchange for a financial consideration, must obtain the approval of the Commission.

(a) The party withdrawing or requesting dismissal of its application (or specific frequencies on the application), petition to deny, informal objection or other pleading or refraining from filing a pleading must submit to the Commission a request for approval of the withdrawal or dismissal, a copy of any written agreement related to the withdrawal or dismissal, and an affidavit setting forth:

(1) A certification that neither the party nor its principals has received or will receive any money or other consideration in excess of the legitimate and prudent expenses incurred in preparing and prosecuting the application, petition to deny, informal objection or other pleading in exchange for the withdrawal or dismissal of the application, petition to deny, informal objection or other pleading, or threat to file a pleading, except that this provision does not apply to dismissal or withdrawal of applications pursuant to bona fide merger agreements;

(2) The exact nature and amount of any consideration received or promised;

(3) An itemized accounting of the expenses for which it seeks reimbursement; and

(4) The terms of any oral agreement related to the withdrawal or dismissal of the application, petition to deny, informal objection or other pleading, or threat to file a pleading.

(b) In addition, within 5 days of the filing date of the applicant's or petitioner's request for approval, each remaining party to any written or oral agreement must submit an affidavit setting forth:

(1) A certification that neither the applicant nor its principals has paid or will pay money or other consideration in excess of the legitimate and prudent expenses of the petitioner in exchange for withdrawing or dismissing the application, petition to deny, informal objection or other pleading; and

(2) The terms of any oral agreement relating to the withdrawal or dismissal of the application, petition to deny, informal objection or other pleading.

(c) No person shall make or receive any payments in exchange for withdrawing a threat to file or refraining from filing a petition to deny, informal objection, or any other pleading against an application. For the purposes of this section, reimbursement by an applicant of the legitimate and prudent expenses of a potential petitioner or objector, incurred reasonably and directly in preparing to file a petition to deny, will not be considered to be payment for refraining from filing a petition to deny or an informal objection. Payments made directly to a potential petitioner or objector, or a person related to a potential petitioner or objector, to implement non-financial promises are prohibited unless specifically approved by the Commission.

(d) For the purposes of this section:

(1) Affidavits filed pursuant to this section must be executed by the filing party, if an individual; a partner having personal knowledge of the facts, if a partnership; or an officer having personal knowledge of the facts, if a corporation or association.

(2) Each application, petition to deny, informal objection or other pleading is deemed to be pending before